

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JON GRAY,

Plaintiff,

No. C 13-04340 WHA

v.

SAN FRANCISCO DEPUTY SHERIFFS  
ASSOCIATION, and DOES 1–10,  
inclusive,

Defendants.

**ORDER DENYING LEAVE TO  
PROCEED IN FORMA PAUPERIS  
ON APPEAL**

Pro se plaintiff appeals the remand of this action for the breach of duty of fair representation. Plaintiff Jon Gray had been a deputy sheriff for the City and County of San Francisco for almost ten years when his employment was terminated on October 6, 2008. According to the complaint, the termination was based on “progressive discipline.” Plaintiff alleges that he started receiving admonishments after he filed a sexual harassment claim and a subsequent workers compensation claim.

Following his termination, plaintiff requested his union arbitrate three disciplinary actions against him that were still pending. The union’s counsel refused to do so. Plaintiff was subsequently told that he had lost those appeals because his union had waived its right to arbitrate.

In January 2013, plaintiff filed a new claim with his former employer, who denied the claim and provided a right to sue notice. On March 25, the union’s legal counsel informed plaintiff that it would not represent him in this matter.

1 On September 19, plaintiff brought this action, requesting a determination as to whether  
2 the union had a duty to represent him. Plaintiff further alleges damages in the amount of  
3 \$1,727,488 as a consequence of having been terminated. For good cause shown, plaintiff was  
4 granted leave to proceed in forma pauperis before the district court (Dkt. No. 27).

5 Defendants moved to dismiss for lack of subject-matter jurisdiction. An order dated  
6 December 5 granted the motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for  
7 lack of subject-matter jurisdiction. While plaintiff's complaint did not state the basis for  
8 invoking federal jurisdiction, the Court found that the two most plausible bases, diversity-of-  
9 citizenship or federal-question jurisdiction under Section 301(a) of the Labor Management  
10 Relations Act, did not establish federal-question jurisdiction in this instance. Accordingly, the  
11 motion to dismiss was granted (Dkt. No. 28).

12 Pursuant to the referral notice from the United States Court of Appeals for the Ninth  
13 Circuit, the Court finds that the appeal is frivolous and therefore leave to proceed in forma  
14 pauperis on appeal is **DENIED**. See 28 U.S.C. 1915(a)(3); *Hooker v. American Airlines*, 302 F.3d  
15 1091, 1092 (9th Cir. 2002).

16 The Clerk shall transmit a copy of this order to the Court of Appeals.

17  
18 **IT IS SO ORDERED.**

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20 Dated: January 28, 2014.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE